

**AMENDMENT TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE TO THE COMMITTEE REPORT FOR THE RESOLUTION
RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND
WILLIAM P. BARR, ATTORNEY GENERAL, U.S. DEPARTMENT OF
JUSTICE, IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY
WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE
JUDICIARY**

Offered by Mr. Nadler

On page 17, insert before “II. Need for the Legislation” the following:

On the evening before the scheduled date of the Committee’s meeting to consider a resolution holding the Attorney General in contempt, and while negotiations were ongoing, the Committee received a letter from Assistant Attorney General Stephen E. Boyd that stated, “In the face of the Committee’s threatened contempt vote, the Attorney General will be compelled to request that the President invoke executive privilege with respect to the materials subject to subpoena.” He then requested that “the Committee hold the subpoena in abeyance and delay any vote on whether to recommend a citation of contempt for noncompliance with the subpoena, pending the President’s determination of this question.” Although Mr. Boyd clarified that this request was “not itself an assertion of executive privilege,” he did explain that should the Committee decide “to proceed in spite of this request . . . the Attorney General will advise the President to make a protective assertion of executive privilege over the subpoenaed material, which undoubtedly includes material covered by executive privilege.” Today, during the Committee’s meeting, the Committee received a letter from Mr. Boyd stating “that the President has asserted executive privilege over the entirety of the subpoenaed materials,” and that this was a “protective assertion” of the privilege. Mr. Boyd attached a letter dated the day of the Committee’s meeting, from Attorney General William P. Barr to the President requesting that the President “make a protective assertion of executive privilege.” No other evidence of the President’s assertion of the privilege was provided.

The Committee has a number of concerns about the validity of this assertion: (1) the purported protective assertion is not a valid claim of privilege, including because executive privilege has been broadly waived in this case as a matter of law and fact; (2) the proposed assertion could have been made previously and at the very least, by May 1, 2019, the subpoena return date; (3) the correspondence does not contain a statement by the President himself asserting the privilege; (4) it is not credible that “the entirety of the subpoenaed material” consists of “communications authored or solicited and received by those members of an immediate White House adviser’s staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate”¹; (5) it is not credible that the entirety of the materials

¹ In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir 1997).

are subject to other constitutionally recognized privileges; (6) the assertion is suspect with respect to redacted portions of the Report because the Attorney General himself has indicated a willingness to allow an arbitrarily limited number of Members to view those materials; (7) the Department of Justice has failed to provide any details by which the Committee might evaluate the applicability of the privilege, such as the senders and recipients of the documents, or the privilege log and other information called for by the subpoena; (8) even if the assertion of the privilege were valid as an initial matter, which it is not, the assertion has been overcome here, as: (i) the Committee has demonstrated a sufficient need for the documents as they are likely to contain evidence critical to the Committee's inquiry; (ii) the documents sought cannot expeditiously be obtained any other way; and (iii) any executive privilege that could be asserted to the report has been waived when the President previously made the decision not to assert executive privilege over any portion of the report, as announced by the Attorney General; (9) there is substantial evidence indicating that the President engaged in obstruction of justice and other misconduct, and therefore the public interest in the fair administration of justice outweighs the President's generalized interest in confidentiality; (10) and without these documents, the Committee cannot fully perform its vital legislative, oversight and constitutional duties. Accordingly, the last-minute claims of the "protective" blanket assertion of executive privilege over the entirety of the subpoenaed materials does not change the fact that Attorney General William P. Barr is in contempt of Congress today for failing to turn over lawfully subpoenaed documents.